

### REMARKS

Claims 24-34, 37-38, 40-47, 53 and 55-57 have been amended. Claims 1-23, 36, 39, 48-52 and 58-60 have been canceled without prejudice. Claims 61-63 have been added. No new matter has been introduced. With entry of this amendment claims 24-35, 37-38, 40-47, 53-57 and 61-63 will be pending.

The Applicant reserves the right to pursue the subject matter of the canceled claims in a continuation application. In other words, the Applicant does not acquiesce to any of the rejections.

Claims 35 and 55-57 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 24, 38, 25-29, 31-34, 37, 40-43, 45-47 and 53-56 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,744,993 ("Bisson").

Claims 30 and 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bisson in view of U.S. Patent No. 3,989,853 ("Forkner").

#### Background and Interview Summary

In an August 15, 2005 Office action, the Examiner indicated that claims 55-57 would be allowable if rewritten in independent form. The Applicant so amended claims 55-57 in a January 17, 2006 amendment to expedite prosecution of the application. In the present Office action, the Examiner cited no new prior art but has withdrawn her previous statements regarding allowance of claims 55-57. As a result, all claims stand rejected. The Applicant requested a telephonic interview to discuss the matter.

During the telephonic interview, the Applicant argued that the claimed invention is distinguishable over Bisson because Bisson does not describe an expanded or partially expanded foodstuff composition that is passed from a region at  $T_1$  and  $P_1$  to a setting region at  $T_2$  and  $P_2$ , where  $T_1 > T_2$  and  $P_1 > P_2$ . The Examiner recited in her interview summary that the Applicant pointed out that in "Bisson the food is not expanded after passing out of the extrusion." What the Applicant argued was that expansion in Bisson was the result of extruding the foodstuff from a high pressure region to one of sub-atmospheric pressure to produce an expanded foodstuff. However, the expanded foodstuff in Bisson was not set by passing the expanded or partially

expanded foodstuff from a region at  $T_1$  and  $P_1$  to a setting region at  $T_2$  and  $P_2$ , where  $T_1 > T_2$  and  $P_1 > P_2$ .

In view of the telephonic interview, the Applicant respectfully submits that the claims are distinguishable over Bisson. Moreover, the Applicant respectfully submits that the most recent amendments to expedite prosecution of the application were unnecessary in light of the Examiner's withdrawal of her previous statements of allowance. Therefore, the Applicant has conformed the claims to those presented in the May 25, 2005 Amendment, with the exception that claims 49-51 and 58-60 have been canceled. Evidence in support of the amendment is presented below.

#### Response to Rejection of Claims 35 and 55-57 under 35 U.S.C. §112

The Examiner recites that "claim 35 is indefinite because it is not clear what is meant by heated to the first temperature because the composition is already heated in an extruder and the temperature in the extruder can be higher than the temperature outside of the extruder." Office action, page 2. More specifically, the Examiner inquired about how the foodstuff is heated if not in an extruder. *Id.* The Applicant respectfully disagrees with the rejection for the following reasons.

Independent claim 61, from which claim 35 depends, recites "[a] process for setting an expanded foodstuff, comprising the steps of passing an expanded foodstuff composition, which is in a plastic state and is therefore capable of further expansion or contraction, at a first temperature and a first pressure into a setting region at a second temperature ...." (Emphasis added.) The specification recites that "[i]nitial expansion (i.e. expansion prior to passing into the setting region) may be at least partially effected by application of heat and/or by reduction of pressure (e.g. application of partial vacuum or extrusion through a die from a relatively high pressure region into a relatively low pressure region)." Page 3, ¶ 6 to Page 4, ¶ 1. Therefore, extrusion is but one of several ways for creating an expanded foodstuff composition. According to claim 35, "the expanded foodstuff composition to be set is cut into pieces *after* extrusion and is formed into balls by tumbling, during which procedure the expanded foodstuff composition is heated to the first temperature prior to being passed into the setting region." (Emphasis added.) The Applicant has chosen to define the first temperature in claim 35 as the temperature of the foodstuff sometime after extrusion and before passage into the setting region. It is well-

established in patent law that an applicant may be his or her own lexicographer. Furthermore, extrusion is not the only process by which foodstuff compositions may be heated. Other methods for heating foodstuff compositions are well-known to those of ordinary skill in the art. Therefore, the “first temperature” in claim 35 is not indefinite as written.

Accordingly, the Applicant respectfully requests withdrawal of the 35 U.S.C. §112 rejection to claim 35.

The Examiner further recites that in claims 55-57 “the phrase ‘wherein the first temperature and first pressure are in a region outside and after an extruder’ is indefinite because it is unclear how this limitation ties into the claims.” Office action, page 2. The Applicant respectfully disagrees for the following reasons.

Independent claim 61, from which claim 55 depends, recites “passing an expanded foodstuff composition, which is in a plastic state and is therefore capable of further expansion or contraction, at a first temperature and a first pressure into a setting region ....”

Independent claim 62, from which claim 56 depends, recites “passing a foodstuff composition which is in at least a partially expanded condition and in a plastic state and is therefore capable of further expansion or contraction and which contains a vaporisable expanding agent, at a first temperature and a first pressure into a setting region ....”

Independent claim 63, from which claim 57 depends, recites “passing a foodstuff composition which is in at least a partially expanded condition and in a plastic state and is therefore capable of further expansion or contraction and which contains a vaporizable expanding agent, at a first temperature and substantially atmospheric pressure into a setting region ....”

All three claims describe passing an expanded (claim 61) or at least partially expanded (claims 62 and 63) foodstuff composition into a setting region. As noted above, the specification recites that “[i]nitial expansion (i.e. expansion prior to passing into the setting region) may be at least partially effected by application of heat and/or by reduction of pressure (e.g. application of partial vacuum or extrusion through a die from a relatively high pressure region into a relatively low pressure region).” Page 3, ¶ 6 to Page 4, ¶ 1. Accordingly, extrusion is just one of many means for expanding the foodstuff composition prior to heating the expanded foodstuff composition to a first temperature and introducing the foodstuff composition into a setting region. Therefore, the term “extruder” in the phrase “wherein the first temperature and first

pressure are in a region outside and after an extruder” in claims 55-57 further defines the process used to make the expanded (claim 61) or at least partially expanded (claims 62 and 63) foodstuff composition.

Accordingly, the Applicant respectfully requests withdrawal of the 35 U.S.C. §112 rejections to claims 55-57.

#### Independent Claim 61 and Dependent Claims 24-35 and 53-55

Bisson does not teach or suggest, among other things, “passing an expanded foodstuff composition, which is in a plastic state and is therefore capable of further expansion or contraction, at a first temperature and a first pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said expanded foodstuff composition which is to be set in the setting region at a second pressure which is lower than said first pressure, whereby to produce a set expanded foodstuff.” The specification recites that “[i]nitial expansion (i.e. expansion prior to passing into the setting region) may be at least partially effected by application of heat and/or by reduction of pressure (e.g. application of partial vacuum or extrusion through a die from a relatively high pressure region into a relatively low pressure region).” Page 3, ¶ 6 to Page 4, ¶ 1. Accordingly, the foodstuff composition may be expanded in any number of ways which includes, but is not limited to, extrusion. The expanded food stuff is then exposed to a region having a first temperature and a first pressure before passage into a setting region at a second temperature and a second pressure. Bisson does not teach or suggest expanding a foodstuff, and then passing the expanded foodstuff from a region at  $T_1$  and  $P_1$  to a setting region at  $T_2$  and  $P_2$ , where  $T_1 > T_2$  and  $P_1 > P_2$ . Application, pages 2-3. In other words, the extrusion temperature of Bisson is not equivalent to the claimed first temperature.

Bisson describes a process in which “the paste-like material issuing from the nozzle bores is passed into an enclosure where a sub-atmospheric pressure prevails. Under the effect of the decompression, part of the water present in this material ... is evaporated while its temperature suddenly falls which causes its puffing and the rigidification of the cellular structure produced.” Col. 3, lines 21-27. As the Bisson dough leaves the nozzle bore of the extruder, it is passed into a region having  $T_1'$  and  $P_1'$ . Unlike claim 61, the expanded dough is not subjected to a second region at  $T_2'$  and  $P_2'$  where  $T_1' > T_2'$  and  $P_1' > P_2'$ . At best, the puffed Bisson product is removed

from the sub-atmospheric region to a region at atmospheric pressure, where  $P_1' < P_2'$ . Bisson, claim 1.

Nevertheless, the Examiner has maintained in a prior Office action that Bisson's foodstuff is partially expanded in the extruder, and therefore, the temperature and pressure of the extruder in Bisson are comparable to  $T_1$  and  $P_1$  of claim 61. Accordingly, the Examiner argues, that Bisson's foodstuff passes from the extruder at  $T_1'$  and  $P_1'$  to the sub-atmospheric region at  $T_2'$  and  $P_2'$ , where  $T_1' > T_2'$  and  $P_1' > P_2'$ . The Applicant respectfully disagrees with the Examiner's reasoning.

First, as noted in the present application, one way to obtain initial expansion of the foodstuff is by extruding the foodstuff through a die having a relatively high pressure region into a region having a relatively low pressure. Application, page 4, ¶ 1. Similarly, Bisson notes that puffing of a paste-like material occurs when the material is passed through the nozzle bore of an extruder into a region having sub-atmospheric pressure. Bisson, col. 3, lines 21-23. Neither the Applicant nor Bisson suggests that a foodstuff is "expanded" or "puffed" prior to exiting an extruder (see claim 55). Instead, they suggest that "expansion" or "puffing" occurs when the foodstuff exits the extruder under relatively high temperature and pressure into a region with a lower pressure.

Second, the Examiner in the previous Office action compared the expansion of dry flakes when moistened with water to "expansion" (or "puffing") as used in the context of the present application and Bisson. However, absorption and expansion are not necessarily synonymous. A sponge can absorb water without expanding. Similarly, flakes do not so much expand as much as they soften when exposed to water. It is almost certain that when water is added to the low density flakes and they become more pliable, the bulk behaviour of the material will tend towards contraction, even if there is a slight "expansion" of individual flakes.

As noted by the Applicant in the specification, expanded foodstuffs are "formed by adding gas directly into the foodstuff composition ... or by injecting gas under pressure and subsequently releasing the pressure (e.g. extrusion). Alternatively ... a chemical agent ... may be incorporated into the foodstuff composition, which agent results in the formation of gas in the foodstuff composition." Application, page 1, paragraph 2. Similarly, Bisson notes that puffing of the paste-like material occurs when the material exits the nozzle bore into a region of reduced pressure, which evaporates water within the foodstuff to cause puffing. Bisson, col. 3, lines 21-

27. One skilled in the art would understand that “expanded” in this context refers to foodstuff expanded or puffed by, for example, the action of gas within the foodstuff and not by a potentially slight “expansion” of flakes due to absorption of water.

Third, the language of claim 61 clearly identifies the first temperature and first pressure as occurring *after* expansion of the foodstuff composition and before passage into the setting region. Since extrusion is a process for expanding foodstuff, the first temperature and first pressure of claim 61 are not equivalent to the extrusion temperature and pressure of Bisson.

Consequently, independent claim 61 and dependent claims 24-35 and 53-55 are allowable. Allowance of these claims is respectfully requested.

#### Independent Claim 62 and Dependent Claims 37-38, 40-47 and 56

For the same and similar reasons presented with respect to claim 61, Bisson does not teach or suggest, among other things, “passing a foodstuff composition which is in at least a partially expanded condition and in a plastic state and is therefore capable of further expansion or contraction and which contains a vaporisable expanding agent, at a first temperature and a first pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said foodstuff composition which is to be set in the setting region at a second pressure which is lower than said first pressure so as to further expand the foodstuff composition by evaporation of the vaporisable expanding agent and produce a set expanded foodstuff.” Bisson does not teach or suggest at least partially expanding a foodstuff, and then passing the expanded foodstuff from a region at  $T_1$  and  $P_1$  to a setting region at  $T_2$  and  $P_2$ , where  $T_1 > T_2$  and  $P_1 > P_2$  and where further expansion occurs within the setting region to produce a set expanded foodstuff. Application, pages 2-3.

Consequently, independent claim 62 and dependent claims 37-38, 40-47 and 56 are allowable. Allowance of these claims is respectfully requested.

#### Independent Claim 63 and Dependent Claim 57

For the same and similar reasons presented with respect to claim 61, Bisson does not teach or suggest “passing a foodstuff composition which is in at least a partially expanded condition and in a plastic state and is therefore capable of further expansion or contraction and which contains a vaporisable expanding agent, at a first temperature and substantially


atmospheric pressure into a setting region at a second temperature, said second temperature being lower than said first temperature; and cooling and setting said foodstuff composition which is to be set in the setting region at a pressure which is lower than atmospheric pressure so as to further expand the foodstuff composition by evaporation of the vaporisable expanding agent and produce a set expanded foodstuff.” Bisson does not teach or suggest expanding a foodstuff, and then passing the expanded foodstuff from a region at  $T_1$  and  $P_1$  to a setting region at  $T_2$  and  $P_2$ , where  $T_1 > T_2$  and  $P_1 > P_2$  and where further expansion occurs within the setting region to produce a set expanded foodstuff. Application, pages 2-3.

Consequently, independent claim 63 and dependent claim 57 are allowable. Allowance of these claims is respectfully requested.

### CONCLUSION

In view of the foregoing, claims 24-35, 37-38, 40-47, 53-57 and 61-63 are allowable. Reconsideration and allowance of claims 24-35, 37-38, 40-47, 53-57 and 61-63 are respectfully requested. Should any issues remain, the Examiner is encouraged to contact the undersigned at the number listed below.

Respectfully submitted,



Gregory J. Hartwig  
Reg. No. 46,761

Docket No.: 063511-9043-00  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-4108

(414) 271-6560

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